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A. INTRODUCTION

The Americans with Disabilities Act (ADA) was enacted on July 26, 1990. The ADA is Federal civil rights legislation that mandates non - discrimination to persons with disabilities. It provides comprehensive rights and protections to individuals with disabilities in the areas of employment, state and local government, public accommodations, and telecommunications. The ADA has five Titles, listed below:

1. Title I – Employment
2. Title II – State and Local Government (including Public Transportation)
3. Title III – Public Accommodations
4. Title IV- Telecommunications
5. Title V - Miscellaneous

A primary goal of the ADA is to ensure that individuals with disabilities are allowed full and equal participation in programs, activities, and services in the mainstream of American society.

Title II of the ADA took affect on January 26, 1992 and covers programs, activities, facilities, and services that are provided by the City of El Paso. Most of the requirements of Title II are based on Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally assisted programs and activities. The ADA extends Section 504's non-discrimination to all activities of public entities, not only entities receiving Federal financial assistance.

The City of El Paso recognizes that its programs and services are fundamental to the public and to the lives of its citizens. To ensure that all of its citizens and the general public have the opportunity to participate in the programs and services offered by the City of El Paso, the City is addressing any necessary changes to improve access in its policies, programs, procedures, and facilities. The City of El Paso is dedicated to providing buildings and facilities that meet the requirements of the Americans with Disabilities Act. The City of El Paso is taking the necessary steps to demonstrate its commitment to creating an inclusive experience for all persons.

1. Overview of the Americans with Disabilities Act (ADA)¹

The ADA prohibits discrimination on the basis of disability in employment, state and local governments, public accommodations, commercial facilities, transportation, and communication.

To be protected by the ADA, an individual must have a disability or have a relationship or association with an individual with a disability. And individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

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a. ADA Title I: Employment

Title I of the ADA requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment related opportunities available to others. It prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodations, when requested, to the individual with a physical or mental impairment, unless it results in an undue hardship.

The City of El Paso Human Resources Department handles all matters pertaining to ADA Title I. Employment activities handled by Human Resources include the application process, testing, interviewing, hiring, job assignment, evaluation, discipline, medal examinations, compensation, promotion, on-the-job-training, layoff/recall, termination, leave, benefits, essential job functions, and job accommodations. Concerns related to employment within the City of El Paso should be directed to Human Resources at 541-4504 (Voice/TTY.)

Complaints or charges of employment discrimination on the basis of disability may be filed with the U.S. Equal Employment Opportunity Commission (EEOC) or at any EEOC field office within 180 days of the date of discrimination. EEOC field offices can be located by contacting:

(800) 669-4000 (Voice)

(800) 669-6820 (TTY)

www.eeoc.gov

Publications and information on EEOC enforced laws may be obtained by calling:

(800) 669-3362 (Voice)

(800) 800-3302 (TTY)

For information on how to request specific job accommodations or how to accommodate an individual with a disability, contact the Job Accommodation Network at:

(800) 526-7234 (Voice/TTY)

www.jan.wvu.edu

b. ADA Title II: State and Local Government Activities

Title II covers all programs, services, and activities of state and local governments, regardless of the size of the government entity or whether the entity receives federal funding. Title II requires that state and local governments give people with disabilities equal opportunity to benefit from all of their programs, services, and activities including but not limited to public education, employment, transportation, recreation, healthcare, social services, courts, voting, municipal meetings, and public rights of way. Title II requires all public entities to evaluate its policies and practices to identify and correct any that are not consistent with the requirements of Title II. All public entities are required to do a self-evaluation of their programs, policies, procedures, communication

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abilities, and facilities including pedestrian facilities (sidewalks, curb ramps, bus stops, access to push buttons on traffic poles, etc.) to determine compliance with Title II and the ADA Accessibility Guidelines for structural elements. Public entities with 50 or more employees are required to maintain the self-evaluation on file for public inspection for three years.

State and local governments must follow the ADA Accessibility Guidelines for new construction and alterations of buildings. Programs must be relocated or provide access in older buildings that are not accessible, and must communicate effectively with people who have hearing, vision, or speech impairments. Public entities are not required to take actions that would result in undue financial and administrative burdens, but must make reasonable modifications to policies, procedures, practices, and facilities where necessary to avoid discrimination against individuals with disabilities. State and local governments that must make physical modifications to achieve program accessibility must establish a transition plan. The plan must list the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, and services to individuals with disabilities, describe the methods that will be used to remove the barriers, estimate the cost of barrier removal, and specify a schedule for completion of the barrier removal and compliance with Title II of the ADA.

Title II requires that public entities with 50 or more employees must designate a responsible employee or person to coordinate the efforts to carry out the responsibilities and requirements of the ADA. The individual must be familiar with the ADA and be able to communicate the requirements to other individuals in the agency. This ensures that any failure by individual employees can be promptly corrected by the designated employee.

A public entity with 50 or more employees must also establish grievance procedures for resolving complaints of violations of the ADA. A specific Grievance and Complaint procedure and form are used when there is a specific grievance or complaint about a program, service, activity, or physical barrier. The Grievance and Complaint form is located in Appendix A.

Complaints for violations of the ADA can be filed with the City of El Paso's ADA Coordinator. The Coordinator can be reached at 541-4243 (Voice/TTY) or at bennettwc@elpasotexas.gov. Complaints of Title II violations can also be filed with the Department of Justice within 180 days of the date of discrimination. In certain situations, cases may be referred to a mediation program sponsored by the Department of Justice. The Department of Justice may bring a lawsuit where it has investigated a matter and has been unable to resolve violations. For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.

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Disability Rights Section – NYAV
Washington, D.C. 20530

www.ada.gov

(800) 514-0301 (Voice)

(800) 514-0380 (TTY)

c. ADA Title III: Public Accommodations

Title III of the ADA covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities such as restaurants, retail stores, movie theaters, doctor's offices, hotels and motels, convention centers, private schools, funeral homes, day care centers, and recreation facilities such as sports arenas and fitness clubs.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They must also comply with the same architectural standards as Title II entities for new construction and alteration of buildings. Title III entities are also required to review or evaluate policies, practices, procedures, and facilities and make reasonable modifications and establish plans to remove barriers, and remove the barriers immediately where it is easily done and does not require a large expense. They must provide effective communication with people with hearing, vision, or speech disabilities.

Complaints of Title III violations may be filed with the Department of Justice. For more information contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section – NYAV
Washington, D.C. 20530

www.ada.gov

(800) 514-0301 (Voice)

(800) 514-0380 (TTY)

d. ADA Title IV: Telecommunications and Relay Services

Title IV of the ADA addresses telephone and television access for people with hearing and speech impairments. It requires telephone companies to establish interstate and intrastate telecommunications relay services (Texas Relay) 24 hours a day, 7 days a week. Relay services enable callers with hearing and speech impairments who use telecommunications devices for the deaf (TDD's), which are also known as teletypewriters (TTY's) and callers who use voice telephones to communicate with each other through a third party communications assistance. The Federal Communications Commission (FCC)

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has set minimum standards for relay services. Title IV also requires closed captioning of federally funded public service announcements.

For more information about relay services, contact the FCC at:

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
www.fcc.gov/cgb/dro
(888) 225-5322 (Voice)
(888) 835-5322 TTY

e. ADA Title V: Miscellaneous Provisions

Title V clarifies that both states and Congress are covered by all provisions of the ADA. It also provides for recovery of legal fees for successful proceedings in accordance with the ADA. Title V establishes a mechanism for technical assistance along with specific instructions to federal agencies required to implement the Act.

Title V includes a provision prohibiting either coercing or threatening or retaliating against the disabled or those attempting to aid people with disabilities in asserting their rights under the ADA.

2. Purpose of the Transition Plan

Realizing that in order to make structural changes in order to provide access to programs, services, and facilities, would take time and money, the Department of Justice Regulations, Federal Register 28CFR Part 35 states that “ in the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a Transition Plan setting forth the steps necessary to complete such changes.” In addition, “if a public entity has responsibility or authority over streets, roads, or walkways its Transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act.” The plan should include timelines for completing the modifications to the facilities. Interested parties including people with disabilities and organizations representing people with disabilities must have an opportunity to participate in the development of the plan by submitting comments. A copy of the plan and self evaluation must be available for public inspection for three years after completion.

The ADA regulations require the Transition Plan to contain the following elements.

- a. A list of physical barriers in the public entities facilities that limit the accessibility of its programs, services, or activities to individuals with disabilities;

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- b. A detailed description of the methods to be utilized to remove these barriers and make the facilities accessible;
- c. The schedule for taking the necessary steps to achieve compliance with Title II;
- d. The name of the official responsible for the plan's implementation;
- e. A schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs. Priorities should be given in the following order:
 - 1. State and local government offices.
 - 2. Transportation
 - 3. Places of public accommodation
 - 4. Employers
 - 5. Other areas (i.e., residential areas where individuals needing curb ramps reside.)
- f. The opportunity for the disability community and other interested parties to participate in the development of the Transition Plan.

In the Title II Technical Assistance Manual, the Department of Justice requires that the following areas be carefully examined in an agency's self evaluation plan:

- 1. A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan.
- 2. A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program, service, or activity. The self-evaluation should identify policy modifications to be implemented and include complete justification for any exclusionary or limiting policies or practices that will not be modified.
- 3. A public entity should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is effective as its communications with others. If a public entity communicates with applicants and beneficiaries by telephone, it should ensure that TDD's or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech. Finally, if a public entity provides telephone emergency services, it should review its policies to ensure direct access to individuals who use TDD's and computer modems.

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4. A public entity should review its policies to ensure that they include provisions for readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals with hearing impairments; and amanuenses for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where these services will be provided. Where equipment is used as part of a public entity's program, activity, or service, and assessment should be made to ensure that the equipment is usable by individuals with disabilities, particularly individuals with hearing, visual and manual impairments. In addition, a public entity should have policies that ensure that its equipment is maintained in operable working order.
5. a review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.
6. A review should be conducted of a public entity's written and audio-visual materials to ensure that individuals are not portrayed in an offensive or demeaning manner.
7. If a public entity operates historic preservation programs, it should review its policies to ensure that it gives priority to methods that provide physical access to individuals with disabilities.
8. A public entity should review its policies to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that a undue financial and administration burden will be imposed by title II, are made properly and expeditiously.
9. A public entity should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings.
10. A public entity should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including section 504 of the Rehabilitation Act and the ADA regulation issued by the Equal Employment Opportunity Commission.
11. A public entity should review its building and construction policies to ensure that the construction of each new facility or part of a facility, or the alteration of existing facilities after January 26, 1992, conforms to the standards designated under the title II regulations.

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12. A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.
13. If a public entity limits or denies participation in its programs, activities, or services based on drug usage, it should make sure that such policies do not discriminate against former drug users, as opposed to individuals who are currently engaged in illegal use of drugs.²

These points are known as the “13 Points of Self Evaluation.”

B. Transition Plan Development

As stated in the introduction, the City of El Paso is required to provide program accessibility in existing facilities under Title II of the ADA, and where physical modifications are necessary to achieve program accessibility, the steps required to bring the modifications about must be provided. The City of El Paso's Transition Plan is based on reviews of our policies, procedures, programs and facilities including right of way areas. The analysis of the policies, procedures and programs has been done on a continual basis since before the passage of the ADA. The reviews helped to develop Ordinance # 9779, in 1989, which prohibits discrimination against individuals with disabilities by the City of El Paso and recipients of financial assistance. The ordinance is provided in Appendix A-1. A grievance procedure was established in 1994 and complaints are investigated and now presented to the Accessibility Advisory Committee, established in 1987, for final resolution if a voluntary resolution to the grievance is not achieved. The grievance procedure is provided in Appendix A-2.

The original self evaluation for the City of El Paso facilities was completed in 1992. An updated study was completed in 2002. In 2006, another study was completed on our buildings using Magellan Assessment and Project Planning System, MAPPS for short. This program has allowed the City to have an assessment of all deficiencies for our facilities and allows us to interactively view and prioritize needed repairs for the facilities including ADA Accessibility Guideline and Texas Accessibility Standards issues. The priorities shown in the MAPPS program are not the same as the community priorities, because they are based on health and safety issues. All ADA issues will have a priority three (3) in MAPPS, but have a different priority for barrier removal that is based on community input that has been obtained on at least two different occasions in the past. MAPPS allows tracking of completed repairs and barrier removal. The program provides an estimated cost for barrier removal. The MAAPS' ADA deficiencies remaining in city facilities are provided in Appendix B. The total estimate for remaining barrier removal in the facilities is 2.45 million dollars.

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A self evaluation of public right of way Transportation Infrastructure was completed in May 2002 (the Martinez Study) and an updated self evaluation of Transportation Infrastructure was completed in May of 2008 by Sun Metro, the public transportation system for El Paso. The updated study Identifies locations that do not have adequate accessible routes to bus stops, bus stop landings, and curb cuts that access the accessible route and bus stop pad, as well as infrastructure that does meet the ADAAG and TAS guidelines. The self evaluation is contained in Appendix C of this document. The new evaluation updated the Martinez study and expanded the evaluation to include sidewalks and bus pads. The evaluation is also an interactive database and is being modified as barriers are removed at bus stops. As of May 2008, the total cost estimate to eliminate remaining barriers was estimated to be 3.36 million dollars.

A self evaluation of public rights of ways curb ramps and sidewalks was completed by the El Paso Street Department in the fall of 2008 with data input completed in November of 2008. The evaluation is stored in ArcView, a geographic information system software that is used for visualizing, managing, creating and analyzing geographic data. The data was collected over a period of eight months by GIS personnel and inspectors hired to collect the data. It is entered as interactive layer and is updated as barriers are removed. The data program identifies locations that are missing curb ramps, where there are gaps in the sidewalk areas, where sidewalks are not installed, where there are broken sidewalks, and sidewalks that are not in compliance. A sample of the data is provided in Appendix D. The estimated cost to install curb ramps at intersections is 19.99 million dollars. The program shows that there are about 4.16 million linear feet of missing sidewalks, sidewalk gaps, sidewalk buckles, and non compliant sidewalks. This number includes locations in subdivisions that were not required to install sidewalks because it was a rural area, areas that were annexed into the city, and at lots that have not been developed yet. This number also includes areas where sidewalks will probably never be installed.

C. Programs to Remove Barriers

The City of El Paso is removing barriers in a number of ways using different programs. The methodology for removal of barriers in City facilities is presented in Appendix E. The programs and a brief description of the programs follow.

ADA Citywide Facility/Building Barrier Removal – This is a program that is intended to address barrier removal in priority facilities as identified by the disability community. The priority facilities are start with the buildings visited by the public the most for example, City Hall, Senior Centers, Recreation Centers, Parks, Entertainment Venues, Health Clinics, Municipal Voting Facilities, Police Regional Commands, followed by all other facilities. The funding comes from the Capital Improvements Program.

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Audible Pedestrian Signal Program – This is a program that began in 2003 at the request of the visually impaired community. The program takes existing signalized intersections and renovates the pedestrian element and installs audible pedestrian signals to assist the visually impaired to cross the intersection. The funding initially came from the Street Department. Community Development funded priorities two through four. Capitol improvement funds have funded other intersections.

Capital Improvement Program (CIP) – This is a program that is managed by the Engineering Department. Funding from the program comes from various sources including Certificates of Obligation, Bond Issuances, and Federal Transportation Funds. The Capital Improvement and Management and Contract Administration Divisions administer and secure the appropriate funding mechanisms and contractual documents needed for project planning and implementation. Projects include new and revitalized City facilities, street and drainage improvements, and major reconstruction of streets.

Curb Cut on Request Program – This is a program that funds are applied for from Community Development Block Grants and the funds are used to remove curbs in primarily residential areas so that individuals with mobility impairments can reach bus routes, areas of business and commerce, etc. from residential areas, the lowest priority for installation of curb ramps.

Parkway Structure Program- This is a program that the Street Department has that is used to remove barriers in the right of way among other right of way issues. Curb ramps, sidewalk gaps and broken sidewalks are installed or fixed with this contract. The Curb Cut on Request Program and the Sun Metro Barrier removal program piggy back on this contract.

Sidewalk Gap Program – This is a program that was established in 2006 to install sidewalks where sidewalks do not exist. It is mostly for residential areas where sidewalks were never installed. This program is funded with Capital Improvement funds.

Street and Drainage Projects – This is a program that is funded with Community Development Block Grant Funding and is similar to the programs that are funded under the Capital Improvement Program. Streets, drainage and pedestrian elements are constructed or reconstructed to improve living conditions in neighborhoods.

Street Department Resurfacing Program – This is a program that is operated by the City's Street Department to resurface city streets. Curb ramps are installed where they do not exist and the curb ramps are reinstalled in a compliant manner if not installed according to standards.

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Sun Metro Barrier Removal Program - This is a program that Sun Metro is doing to install bus pads, curb ramps and sidewalks on bus routes. The program is funded with grants that Sun Metro receives.

D. Summary and Schedule for Barrier Removal

The City of El Paso has made substantial progress in eliminating barriers with respect to its facilities and pedestrian elements in right of ways, but there is still work to be done to provide full program accessibility. Of the 414 facilities that the City of El Paso has, 131 have elements that contain barriers to portions of the facility. The list of buildings is shown in Appendix B. The total cost to remove the remaining barriers from our facilities is \$2,450,000.00. At our current spending rate (\$500,000.00 per year) for barrier removal, the facilities will be complete in five years.

Sun Metro has 3064 of bus stops. There are 1204 curb ramps, 1541 bus stop landings, and 31, 400 lineal feet of sidewalk needed at the bus stops, to make them compliant. The total estimated cost to do the above mentioned work based on today's costs is \$3,599,160.00. At our current spending rate (\$500,000.00 per year) barrier removal at our bus stops will be complete in a little over seven years (7.2 years.)

There are 7996 corners that have been identified as needing curb ramps, not including the corners that Sun Metro needs to do. The total cost of the curb ramp placement, based on today's costs is \$19,990,000.00. At our current spending rate (\$2.5 million per year), all curb ramps will be complete in 8 years.

The schedule for barrier removal in our buildings is as stated earlier in this document. Sun Metro is installing sidewalks, curb ramps and bus stop pads at priority locations that the community identified a number of years ago. The curb ramps that are being installed at other locations are being done around our facilities first, transportation, places of public accommodation and employers, followed by other areas (residential.) Residential areas are being done on a first come first served basis using Community Development Block Grant funds from the Curb Cut on Request Program.

The Accessibility Coordinator has been designated at the person responsible for the development and implementation of the City of El Paso's Transition Plan. The City's Accessibility Coordinator and be contacted by telephone at (915) 541-4243 voice/TDD.

¹ A Guide to Disability Rights Laws U. S. Department of Justice, September 2005, pg. 2-6

² ADA Title II Technical Assistance Manual Covering State and Local Governments, Department of Justice pg. 38 & 39.